

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

JESSE TAWAN FLOWERS,

Petitioner,

v.

Case No. 2:08-cv-143  
HON. R. ALLAN EDGAR

JERI-ANN SHERRY,

Respondent.

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**MEMORANDUM AND ORDER**

Michigan state prisoner Jesse Tawan Flowers filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The habeas petition was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and W.D. Mich. LCivR 72.1(d).

On June 30, 2010, Magistrate Judge Greeley submitted his report and recommendation. [Doc. No. 23]. The Magistrate Judge recommends that the habeas petition be dismissed without prejudice on the ground that petitioner Flowers has not fully exhausted the post-conviction remedies available to him in the Michigan state courts as required by 28 U.S.C. § 2254(b)(1). It is further recommended that any application for a certificate of appealability be denied pursuant to 28 U.S.C. § 2253(c)(2).

Petitioner Flowers has not timely filed an objection to the report and recommendation. After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that the 28 U.S.C. § 2254 petition for writ of habeas corpus shall be **DISMISSED WITHOUT PREJUDICE**.

Any application by petitioner Flowers for a certificate of appealability shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b)(1). For the reasons expressed in the report and recommendation, reasonable jurists could not find that this decision to dismiss the habeas petition is debatable or erroneous. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2009); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Webb v. Mitchell*, 586 F.3d 383, 401 (6th Cir. 2009).

A separate judgment will be entered.

SO ORDERED.

Dated: July 22, 2010.

/s/ R. Allan Edgar  
R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE